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14
15 UNITED STATES DISTRICT COURT
16 DISTRICT OF NEVADA

17 GERALD ARMSTRONG,

18 Plaintiff,

Civ. No. 97/00670 - HDM (RAM)

19 v.

20 CHURCH OF SCIENTOLOGY
INTERNATIONAL, a California
21 corporation; and the RELIGIOUS
TECHNOLOGY CENTER, a
22 California corporation,

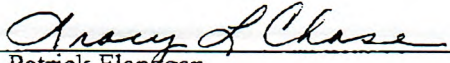
**EX PARTE MOTION FOR
LEAVE TO CONDUCT
DISCOVERY**

23 Defendants.
24 _____/

25 Defendants Religious Technology Center ("RTC") and Church of Scientology International
26 ("CSI"), by and through their counsel of record herein, hereby move for leave to conduct depositions of
27 Carson-Tahoe Hospital (documents only) and of Dr. Rex Baggett (documents and testimony) pertaining to
28 the medical condition of plaintiff's counsel, Mr. Abbott, as claimed in plaintiff's August 4 *ex parte* Motion

1 for Protective Order. The grounds for this motion are that there are good reasons to believe that Mr.
2 Abbott's claimed medical infirmity, which allegedly prevented him from complying with the July 28 Order
3 of this Court (Atkins, M.J.), may not be completely accurate. If the discovery requested herein proves that
4 belief to be accurate, defendants intend to move Judge Reed for appropriate relief for plaintiff's failure to
5 comply with the July 28 Order.

6 This *ex parte* Motion is made pursuant to LR 6-2 and 7-2 and based upon the Memorandum of
7 Points and Authorities appended hereto.

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Gerald Armstrong is a fugitive from two outstanding arrest warrants issued by the State of California, where he has been sentenced to a period of incarceration. He commenced this action alleging diversity jurisdiction and, in particular, that he is now domiciled in Nevada. Plaintiff is understandably reluctant to appear for deposition or in any public place where he is subject to arrest and extradition. By Order entered July 10, 1998, Judge Reed, *inter alia*, set an evidentiary hearing for August 18, 1998, on plaintiff's claim of Nevada domicile. The hearing date was later changed to August 20, 1998.

On July 16, RTC served a notice for a deposition of plaintiff, limited to the issue of his domicile, to be conducted at its Reno counsel's office on Monday, August 3 and, if necessary, continuing on Tuesday, August 4. On July 20, Mrs. Mary Abbott, the wife and secretary of plaintiff's counsel informed defendants' local counsel, Mr. Flanagan, that Mr. Abbott was scheduled to be out of town for the entirety of the first two weeks of August and therefore could not attend the noticed deposition of plaintiff. Mr. Flanagan made several requests for alternate dates and left several messages for Mr. Abbott to call him but it was not until Friday, July 24, that Mr. Abbott responded.

On Friday, July 24, Mr. Abbott confirmed to Mr. Flanagan that he was scheduled to be out of state the first two weeks of August, despite the fact that on July 22, Mr. Abbott served three (3) notices for depositions in this case for August 5, August 10, August 12 and August 14, 1998. When Mr. Flanagan proposed to take plaintiff's deposition on July 30, 1998, before Mr. Abbott left town, Mr. Abbott declined, raising a new objection that RTC's deposition notice provided less than thirty (30) days' notice and was therefore improper.

Faced with an impasse as to plaintiff's deposition and after a lengthy telephone conference with counsel in a sincere effort to resolve the issue of the plaintiff's deposition, defendants filed a Motion to Compel Discovery and sought a hearing before the Court in order to resolve the dispute. At defendants' request, a 40-minute telephone conference was held on Tuesday, July 28, 1998, before Magistrate Judge Phylis Halsey Atkins. At this hearing, Mr. Abbott objected on several grounds, including the lack of thirty (30)-day notice, that he wanted to proceed with the depositions he had noticed, and that he was scheduled to be out of town at an historic family reunion, that he had other obligations which precluded his appearance in this State (but that he would cut his trip short) and the only time he could be available would be August

1 18, 1998.

2 Defendants' counsel offered to depose plaintiff on Thursday, July 30 or Friday, July 31, 1998.
3 Mr. Abbott then told the Court that he was actually leaving on Thursday, July 30, not on August 3, to attend
4 a special family reunion in Ohio and that if needed, he could be back in Reno by August 5. As a result of
5 that conference, the Magistrate Judge issued the July 28 Order directing that plaintiff appear for deposition
6 on August 5 and, if necessary, August 6. Thus, as of the end of that court conference, Mr. Abbott was set
7 to leave the State on Thursday July 30, and plaintiff's deposition was set to proceed on his August 5, 1998.

8 Later, on the afternoon of July 28, 198, within one hour or so of the Magistrate Judge's Order, Mr.
9 Abbott telephoned Mr. Flanagan and asked that plaintiff's deposition be postponed to August 7 and not
10 proceed on August 5. After consulting with defendants and their principal counsel, counsel declined to
11 change the date of plaintiff's deposition.

12 Mr. Abbott did apparently did not leave town for his special family reunion in Ohio on July 30. On
13 Friday, July 31, Mr. Abbott, according to his wife, collapsed and was taken to Carson-Tahoe Hospital where
14 he was put in intensive care for a few hours and then, because all of his vital signs were normal, he was
15 moved out of intensive care and into the TELI unit. On Tuesday, August 4, with defendants' out-of-town
16 principal counsel having traveled to Reno for the August 5 deposition, Mr. Abbott, from his hospital bed,
17 served and filed an *ex parte* motion to postpone the August 5 deposition of plaintiff on the grounds of his
18 illness. That motion was supported by a note from Dr. Baggett asserting that Mr. Abbott had "an acute
19 cardiac/pulmonary disorder," that he would remain hospitalized on August 5, and that he could not resume
20 full activity until August 19, 1998, coincidentally, the day before the scheduled August 20 hearing before
21 Judge Reed.

22 Based upon Mr. Abbott's *ex parte* motion and Dr. Baggett's note, this Court (McQuaid, M.J.) issued
23 an Order on August 4, *inter alia*, postponing the deposition of plaintiff and continued the date of the hearing
24 before Judge Reed.

25 From the foregoing sequence of events and noting particularly Mr. Abbott's *seriatim*, relentless
26 efforts, before his hospitalization, to prevent the deposition of plaintiff and the convenience of Dr. Baggett's
27 note that Mr. Abbott could not be available to attend the deposition of plaintiff until the day before the
28 August 20 hearing, defendants are certainly entitled to be skeptical respecting the incredibly fortuitous

1 timing of Mr. Abbott's illness. Defendants therefore seek leave of this Court to seek document discovery
2 from Carson-Lake Tahoe Hospital, and documents and, if necessary, a brief deposition of Dr. Baggett. If
3 defendants' present, restrained skepticism is borne out, if Mr. Abbott's condition was not as presented,
4 defendants intend to move Judge Reed before the now-rescheduled September 2 hearing, to dismiss the
5 Complaint for plaintiff's failure to comply with the July 28 Order compelling his deposition and for an
6 award of the costs and counsel fees incurred by counsel to come to Reno for the aborted August 5
7 deposition.

8
9 Dated: August 7, 1998

Respectfully submitted,

10 HALE LANE PEEK DENNISON HOWARD &
11 ANDERSON

12
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Pat Flanagan

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25 *Attorneys for Defendant Church of Scientology International*
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I, the undersigned, declare:

I am employed in the City of Reno, County of Washoe, State of Nevada by the law offices of Hale Lane Peek Dennison Howard and Anderson. My business address is 100 W. Liberty Street, Tenth Floor, Reno, Nevada 89501. I am over the age of 18 years and not a party to this action.

I am readily familiar with Hale Lane Peek Dennison Howard and Anderson's practice for collection and processing of its outgoing mail with the United States Postal Service. Such practice in the ordinary course of business provides for the deposit of all outgoing mail with the United States Postal Service on the same day it is collected and processed for mailing.

On August 7, 1998, I served the foregoing **EX PARTE MOTION FOR LEAVE TO CONDUCT DISCOVERY** by facsimile (702)782-8362 and by placing a true copy thereof in Hale Lane Peek Dennison Howard and Anderson's outgoing mail in a sealed envelope, addressed as follows:

George W. Abbott, Esquire
George W. Abbott, Chtd.
2245 B Meridian Boulevard
P.O. Box 98
Minden, Nevada 89423

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on August 7, 1998.

Lucille Bagnall